

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address

☐ Individual appearing without attorney  
☒ Attorney for: Chapter 7 Trustee Jeffrey I. Golden

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**

In re:  
THREE BY THREE, INC., a California corporation,

CASE NO.: 8:14-bk-14570-MW  
CHAPTER: 7

## NOTICE OF SALE OF ESTATE PROPERTY

Debtor(s).

**Sale Date:** 11/02/2015

**Time:** 2:00 pm

**Location:** 411 West Fourth Street, Santa Ana, California 92701

**Last date to file objections: 10/29/2015**

Personal property assets of the Debtor, including, but not limited to, barrels and bottles of wine, harvesting and bottling equipment, vehicles, office furnishings, other equipment, a 330-gallon storage tote and 112 cases of unused wine bottles (together, the "Personal Property").

**Proposed sale price:** \$ 25,000.00

**Overbid procedure (if any):** See attached overbid procedures.

**If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:**

November 2, 2015 at 2:00 p.m.  
Courtroom 6C, United States Bankruptcy Court  
411 West Fourth Street, Santa Ana, California 92701

**Contact person for potential bidders (include name, address, telephone, fax and/or email address):**

WEILAND GOLDEN LLP  
Beth E. Gaschen, Esq.  
Christopher J. Green, Esq.  
650 Town Center Drive, Suite 950  
Costa Mesa, California 92626  
Telephone 714-966-1000  
Facsimile 714-966-1002

Date: 10/08/2015

## **THE OVERBID PROCEDURES – Case No. 8:14-bk-14570-MW**

The Trustee proposes the following procedure to allow for overbids prior to the Court's approval of the sale of the Personal Property<sup>1</sup>:

1. Qualifying bidders ("Qualifying Bidder") shall:
  - a. Bid at least \$27,000.00 in cash for the Personal Property;
  - b. Set forth in writing the terms and conditions of the offer that are at least as favorable to the Trustee as those set forth in the Agreement attached as Exhibit "1" ;
  - c. Be financially qualified, in the Trustee's exercise of his sound business judgment, to close the sale as set forth in the Agreement;
  - d. Submit an offer that does not contain any contingencies to closing the sale, including, but not limited to, financing contingencies;
  - e. Submit a cash deposit of \$27,000.00 (the "Overbid Deposit") payable to Jeffrey I. Golden, Chapter 7 Trustee for the Bankruptcy Estate of Three by Three Inc., in the form of a cashier's check, which Overbid Deposit shall be non-refundable if the bid is deemed to be the Successful Bid, as defined in paragraph 4 below. The Overbid Deposit, written offer, and evidence of financial qualification must be delivered to the Trustee's counsel at or before the hearing as set by the Court. The Trustee's counsel's address is listed in the upper left hand corner of page 1 of this Motion.
2. At the hearing on the Motion, only the Buyer and any party who is deemed a Qualifying Bidder shall be entitled to bid.

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<sup>1</sup> Capitalized terms not expressly defined herein shall have the meanings ascribed to them in the Motion.

3. Any incremental bid in the bidding process shall be at least \$1,000.00 higher than the prior bid.

4. At the hearing on the Motion and upon conclusion of the bidding process, the Trustee shall decide, subject to Court approval, which of the bids is the best bid, and such bid shall be deemed to be the "Successful Bid." The bidder who is accepted by the Trustee as the successful bidder (the "Successful Bidder") must pay all amounts reflected in the Successful Bid in cash at the closing of the sale. At the hearing on the Motion, and upon conclusion of the bidding process, the Trustee may also acknowledge a back-up bidder (the "Back-Up Bidder") which shall be the bidder with the next best bid. Should the Successful Bidder fail to close escrow on the sale of the Personal Property, the Trustee may sell the Personal Property to the Back-Up Bidder without further Court order.

<p>Attorney or Party Name, Address, Telephone &amp; FAX Nos., State Bar No. &amp; Email Address</p> <p>WEILAND GOLDEN LLP Beth E. Gaschen, State Bar No. 245894 bgaschen@wglp.com Christopher J. Green, State Bar No. 295874 cgreen@wglp.com 650 Town Center Drive, Suite 950 Costa Mesa, California 92626 Telephone: (714) 966-1000 Facsimile: (714) 966-1002</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Chapter 7 Trustee Jeffrey I. Golden</p>		<p>FOR COURT USE ONLY</p>	
<p><b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION</b></p>			
<p>In re:</p> <p>THREE BY THREE, INC., a California corporation,</p> <p>Debtor(s).</p>		<p>CASE NO.: 8:14-bk-14570-MW CHAPTER: 7</p>	
		<p><b>NOTICE OF MOTION FOR:</b> ORDER:(1) AUTHORIZING SALE OF PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS PURSUANT TO 11 U.S.C. §363(b) AND (f); (2) APPROVING OVERBID PROCEDURES; (3) APPROVING BUYER AS GOOD-FAITH PURCHASER PURSUANT TO 11 U.S.C. §363(m); AND (4) APPROVING COMPROMISE OF CONTROVERSY PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 <b>(Specify name of Motion)</b></p>	
		<p>DATE: 11/02/2015 TIME: 2:00 pm COURTROOM: 6C PLACE: 411 West Fourth Street Santa Ana, California 92701</p>	

1. TO (*specify name*): ALL INTERESTED PARTIES
2. NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached ~~Motion and accompanying documents~~. SUMMARY OF THE MOTION. A COMPLETE COPY OF THE MOTION MAY BE OBTAINED FROM THE CLERK OF THE COURT OR BY CONTACTING COUNSEL FOR THE TRUSTEE.
3. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

4. **Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to LBR 9013-1. If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
5. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the judge's self-calendaring procedures.

Date: 10/08/2015

WEILAND GOLDEN LLP  
Printed name of law firm

/s/ CHRISTOPHER J. GREEN  
Signature

Christopher J. Green  
Printed name of attorney

**SUMMARY OF MOTION**

By the Motion, the Trustee seeks the Court's approval of the sale of certain personal property of the Estate to Island Cuvee Wine Company, Inc. ("Island Cuvee") for a purchase price of \$25,000, subject to overbid, and of the settlement of all claims of Island Cuvee and Jerry Paulk ("Paulk"), the owner of Island Cuvee.

**SUMMARY OF TERMS OF PROPOSED SALE AND COMPROMISE**

Pursuant to the terms of the sale and compromise which are set forth in the *Settlement Agreement* (the "Agreement"),<sup>1</sup> a copy of which is attached to the Motion as Exhibit "A," the Trustee seeks to sell the Warehouse Assets, the Tote, the Empty Bottles, and all other personal property listed on Exhibit "1" attached to the Agreement (together, the "Personal Property") for the benefit of the Estate and to settle all claims of Island Cuvee and Paulk, and Island Cuvee desires to purchase the Personal Property listed on Exhibit "1." The Personal Property excludes any and all barreled and bottled wine located at Maurice Car'rie Winery, and any and all claims against Maurice Car'rie Winery. The Trustee, Island Cuvee and Paulk are referred to as the "Parties." The salient terms of the proposed sale and settlement are as follows:

1. Bankruptcy Court Approval. The Agreement is subject to approval of the Court. The order approving the Agreement shall become final fifteen days after it is entered unless an appeal is timely-filed and a stay pending appeal is obtained (the "Final Order").
2. Purchase of the Estate's Interests in the Personal Property. Island Cuvee<sup>2</sup> agrees to purchase the Personal Property for \$25,000.00. Island Cuvee shall be allowed to credit bid the amount of \$25,000.00 on account of the Secured Claim as the purchase price for the Personal Property, and in the event there are qualified overbids, Island Cuvee shall be allowed to credit bid its Secured Claim up to \$33,625.38. The amount of Island Cuvee's successful bid is referred to as the "Credit Bid." On the Effective Date, if Island Cuvee is the successful bidder, Island Cuvee shall own all of the Estate's interests in the Personal Property and the Trustee shall thereafter execute any and all documents needed to properly transfer title. Island Cuvee shall be responsible for its own costs for preparing any document which it believes is necessary to transfer the Estate's interest.
3. No Representation or Warranty in Personal Property. The Trustee agrees to sell the Estate's interest, if any, in, and Island Cuvee agrees to buy, the Personal Property as-is, where-is, without warranties, conditions, representations or guaranties of any kind, express or implied. Island Cuvee agrees that it has done its own investigation regarding the Personal Property and is not relying on any representations from the Trustee or any agent acting on behalf of the Trustee. Island Cuvee shall be under no obligation to the Estate or the Trustee to pursue any claims acquired under this Agreement against any third party or parties, and may litigate, settle and/or

<sup>1</sup> Any terms not specifically defined herein shall have the meanings set forth in the Agreement.

<sup>2</sup> Island Cuvee's address is 28581 Front Street, Temecula, CA 92590.

release such claims at its sole discretion; the Estate will not retain any interest in any such claims.

4. Overbid. The sale of the Personal Property is subject to overbid.

5. Possession. The Trustee is not providing possession of any assets to Island Cuvee except the Warehouse Assets and any other personal property assets in the actual custody of the Trustee.

6. The Warehouse Lease. Island Cuvee shall have the right to negotiate with the landlord of the Warehouse to take over the Warehouse Lease and/or execute a new lease for the space. The Trustee is not assuming and assigning the Warehouse Lease to Island Cuvee, and Island Cuvee is not assuming any liabilities of the Estate with regard to or related to the Warehouse Lease.

7. Release of Secured Claim. The balance of the Secured Claim in excess of the Credit Bid and any other claim asserted by Island Cuvee, whether known or unknown, shall be deemed released against the Estate (but not against any other party or parties liable therefor). To the extent Island Cuvee does not credit bid its entire \$33,625.38 claim, Island Cuvee may pursue any amount remaining against any other obligors. Paulk will similarly retain any and all rights against any other obligor with regard to the General Unsecured Claim.

8. Releases and Waivers. The Parties shall provide the releases and waivers set forth in the Agreement.

9. Jurisdiction. The United States Bankruptcy Court for the Central District of California shall have sole and exclusive jurisdiction to hear and decide any and all controversies or matters relating to the Agreement.

### **SUMMARY OF OVERBID PROCEDURES**

The Trustee proposes the following procedure to allow for overbids prior to the Court's approval of the sale of the Personal Property:

1. Qualifying bidders ("Qualifying Bidder") shall:

a. Bid at least \$27,000.00 in cash for the Personal Property;

b. Set forth in writing the terms and conditions of the offer that are at least as favorable to the Trustee as those set forth in the Agreement attached to the Motion as Exhibit "1" ;

c. Be financially qualified, in the Trustee's exercise of his sound business judgment, to close the sale as set forth in the Agreement;

d. Submit an offer that does not contain any contingencies to closing the sale, including, but not limited to, financing contingencies;

e. Submit a cash deposit of \$27,000.00 (the "Overbid Deposit") payable to Jeffrey I. Golden, Chapter 7 Trustee for the Bankruptcy Estate of Three by Three Inc., in the form of a cashier's check, which Overbid Deposit shall be non-refundable if the bid is deemed to be the Successful Bid, as



defined in paragraph 4 below. The Overbid Deposit, written offer, and evidence of financial qualification must be delivered to the Trustee's counsel at or before the hearing as set by the Court. The Trustee's counsel's address is listed in the upper left hand corner of page 1 of this Motion.

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3. Any incremental bid in the bidding process shall be at least \$1,000.00 higher than the prior bid.

4. At the hearing on the Motion and upon conclusion of the bidding process, the Trustee shall decide, subject to Court approval, which of the bids is the best bid, and such bid shall be deemed to be the "Successful Bid." The bidder who is accepted by the Trustee as the successful bidder (the "Successful Bidder") must pay all amounts reflected in the Successful Bid in cash at the closing of the sale. At the hearing on the Motion, and upon conclusion of the bidding process, the Trustee may also acknowledge a back-up bidder (the "Back-Up Bidder") which shall be the bidder with the next best bid. Should the Successful Bidder fail to close escrow on the sale of the Personal Property, the Trustee may sell the Personal Property to the Back-Up Bidder without further Court order.

#### **SUMMARY OF BASIS FOR RELIEF**

Through his agent, the Trustee marketed the wine for six months and sold as much wine as possible. However, the Trustee's authority to operate the Debtor's business expired on July 31, 2015, and he is no longer operating the Debtor's business. Therefore, the Trustee has no authority to sell the Personal Property in the ordinary course. Besides Island Cuvee, no other potential purchaser has expressed interest in making an offer and, in light of the nature of the Personal Property it is highly unlikely that any other potential purchaser exists.

The proposed sale and settlement provides for the release of a \$33,625.38 secured claim against the Personal Property which has an uncertain value and for which the Trustee has received no other offer.

#### **SUMMARY OF RELIEF SOUGHT BY THE MOTION**

By the Motion, the Trustee seeks entry of an order providing for the following relief:

1. Finding that Island Cuvee has performed its own investigation regarding the Personal Property and is not relying on any representations of the Trustee or the Trustee's agents regarding the Personal Property;

2. Finding that notice of the Motion is proper and adequate;

3. Approving the terms of the Agreement and authorizing the Trustee to sell the Personal Property listed on Exhibit "1" to Island Cuvee (or any successful overbidder) "as is," "where is," without representation or warranty, free and clear of any and all liens, claims, and interests, pursuant to 11 U.S.C. § 363(b) and (f), and determining that Island Cuvee is entitled to the protections of § 363(m);

4. Authorizing the Trustee to execute any documents or take any actions reasonably necessary to effectuate the terms of the Agreement;

- 1 5. Island Cuvee will not be entitled to any distribution from the Estate;
- 2 6. Waiving any requirements for lodging periods imposed by Local Bankruptcy
- 3 Rule 9021-1 and any other applicable bankruptcy rules;
- 4 7. Waiving the stay imposed by Federal Rule of Bankruptcy Procedure 6004(h)
- 5 and any other applicable bankruptcy rules; and
- 6 8. For such other and further relief as the Court may deem just and proper.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

**650 Town Center Drive, Suite 950, Costa Mesa, California 92626**

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION FOR ORDER: (1) AUTHORIZING SALE OF PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS PURSUANT TO 11 U.S.C. SECTION 363(B) AND (F); (2) APPROVING OVERBID PROCEDURES; (3) APPROVING BUYER AS GOOD FAITH PURCHASER PURSUANT TO 11 U.S.C. SECTION 363(M); AND (4) APPROVING COMPROMISE OF CONTROVERSY PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **October 9, 2015**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) **October 9, 2015**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **October 9, 2015**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Mark Wallace, 411 W. 4<sup>th</sup> Street, Santa Ana, CA 92701

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 9, 2015

*Date*

Kelly Adele

*Printed Name*

/s/ Kelly Adele

*Signature*

ISLAND CUVÉE WINE COMPANY  
INC., C/O STUART J. WALD  
36154 COFFEE TREE PLACE  
MURRIETA, CA 92562-4394

KIMBALL, TIREY & ST. JOHN LLP,  
5510 TRABUCO ROAD  
IRVINE, CA 92620-5705

THE WINERY GROUP, A  
CALIFORNIA GENERAL PARTN,  
1210 KEYSTONE, SUITE B  
VISTA, CA 92081-8354

THREE BY THREE, INC.  
5515 BEVERLY LANE  
YORBA LINDA, CA 92887-5625

SANTA ANA DIVISION  
411 WEST 4TH STREET, SUITE 2030  
SANTA ANA, CA 92701-4500

ASCAP  
PO BOX 331608-7515  
NASHVILLE, TN 37203

~~AIVA PROPERTIES~~  
~~43015 POLDERDEER COOP~~  
~~TEMECULA, CA 92590~~  
Mail Returned on 2/23/15

~~AIVA PROPERTIES~~  
~~43015 POLDEREER LOOP~~  
~~TEMECULA, CA 92590~~  
Mail Returned on 2/23/15

CARL OLSON  
5515 BEVERLY LANE  
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DEBBIE CONLEY  
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SAN DIEGO, CA 92129-3104

EMPLOYMENT DEVELOPMENT  
DEPARTMENT,  
BANKRUPTCY GROUP MIC 92E  
PO BOX 826880  
SACRAMENTO, CA 95814

EMPLOYMENT DEVELOPMENT  
DEPT  
PO BOX 2068  
RANCH CORDOVA, CA 95741-2068

EXPRESS BUSINESS LOANS  
194 PARK AVE #B,  
AMITYVILLE, NY 11701-2733

FRANCHISE TAX BOARD,  
BANKRUPTCY SECTION MS A340,  
PO BOX 2952  
SACRAMENTO CA 95812-2952

FRANCHISE TAX BOARD  
ATTN: BANKRUPTCY  
P.O. BOX 2952  
SACRAMENTO, CA 95812-2952

HAPPY ROCK MERCHANT  
SOLUTIONS  
149 W 36TH ST 12TH FLOOR  
NEW YOUR, NY 10018-9467

HAPPY ROCK MERCHANT  
SOLUTIONS, LLC  
REBECCA R. CUSICK ESQ.  
149 W. 36TH ST 12TH FLOOR  
NEW YORK, NY 10018-9467

HUGHES COMMERCIAL SERVICES  
5530 CORBIN AVE #226  
TARZANA, CA 91356-7131

INTERNAL REVENUE SERVICE  
P.O. BOX 7346  
PHILADELPHIA, PA 19101-7346

ISLAND CUVÉE WINE CO  
JERRY PAULK  
28581 FRONT ST  
TEMECULA, CA 92590-2724

ISLAND CUVÉE WINE COMPANY,  
28581 FRONT STREET  
TEMECULA, CA 92590-2724

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TEMECULA, CA 92590-2724

JILL ROBERTS  
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MARY MIGHT  
1642 MAXZIM AVE  
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MARY OLSON  
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MURICE CAR'RIE WINERY  
34225 RANCHO CALIF ROAD  
TEMECULA, CA 92591-5054

PAULK LAW OFFICE  
28521 FRONT STREET  
TEMECULA, CA 92590-2724

POSAL ANNEX  
30520 RANCHO CALIF ROAD, #107  
TEMECULA, CA 92591

PRESS ENTERPRISE  
FREEDOM COMMUNICATIONS INC.  
625 N. GRAND AVE, 4<sup>TH</sup> FL FINANCE  
SANTA ANA, CA 92701

RCM CAPITAL PARTNERS  
28459 OLD TOWN FRONT ST., #225  
TEMECULA, CA 92590

SOUTHERN CALIFORNIA EDISON  
CO.  
ATTN: CREDIT PAYMENT SERVICES  
1551 W. SAN BERNARDINO RD  
COVINA, CA 91722

STATE BOARD OF EQUALIZATION  
SPECIAL OPERATIONS BRANCH,  
MIC: 55  
P.O. BOX 942879  
SACRAMENTO, CA 94279

STATE BOARD OF EQUALIZATION  
P.O. BOX 942879  
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THOMAS B. COPENHAVER  
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29200 SHORE BREEZE STREET  
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ANTHONY REVIER  
29507 PEBBLE BEACH DRIVE  
MURRIETA, CA 92563

FAST BUSINESS FUNDING LLC  
ERICA TORRES  
2001 NW 107<sup>TH</sup> AVE, 3<sup>RD</sup> FLOOR  
MIAMI, FL 33172

KIMBALL, TIREY & ST. JOHN LLP  
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IRVINE, CA 92620

THE WINERY GROUP, A CALIFORNIA  
GENERAL PARTNERSHIP  
1210 KEYSTONE, SUITE B  
VISTA, CA 92081

THE WINERY GROUP  
1210 KEYSTONE, SUITE B  
VISTA, CA 92081

INDEPENDENT MANAGEMENT  
SERVICES  
P.O. BOX 3876  
ORANGE, CA 92867

**Electronic Mail Notice List**

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Stuart J Wald tertiaryaccount@yahoo.com  
Christopher P Walker cwalker@cpwalkerlaw.com, lhines@cpwalkerlaw.com

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

**650 Town Center Drive, Suite 950, Costa Mesa, California 92626**

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

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The Honorable Mark Wallace, 411 W. 4<sup>th</sup> Street, Santa Ana, CA 92701

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 9, 2015

*Date*

Kelly Adele

*Printed Name*

*/s/ Kelly Adele*

*Signature*

**Electronic Mail Notice List**

Frank Cadigan frank.cadigan@usdoj.gov  
Beth Gaschen bgaschen@wglp.com, kadele@wglp.com;lfisk@wglp.com;tziemann@wglp.com  
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Abel Ortiz Abel.ortiz@kts-law.com, holly.stewart@kts-law.com;tatiana.harris@kts-law.com;jaclyn.hunter@kts-law.com;danielle.glidden@kts-law.com  
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Jerry A Paulk jpaulk@paulklaw.com, marcella@paulklaw.com  
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